

Message

From: Palmer, Leif [Palmer.Leif@epa.gov]
Sent: 6/12/2020 2:04:53 PM
To: Nagrani, Kavita [Nagrani.Kavita@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]
CC: Ghosh, Mita [Ghosh.Mita@epa.gov]
Subject: RE: FL Assumption
Attachments: NHPA Section 106 Manual 2014.docx

Next time you talk to DEP have them ask their SHPO if the SHPO has entered into a NHPA Programmatic Agreement NHPA with any other federal agency?

I'd like to know from OGC if the attached manual is the most recent version?

The manual has a list of Programmatic Agreements that EPA has entered into:

Have we talk to Mark Fite's group about whether they have anyone assigned to NHPA? The R4 NEPA handled the Atlantic Station agreement.

List of NHPA Agreements by EPA:

- 5 Example Memoranda of Agreement (will be available via EPA intranet)
 - A. Atlantic Steel MOA
 - B. Murray Smelter MOA
 - C. Roebling Steel MOA
 - D. Amber Milling MOA
 - E. Eastern Surplus MOA
 - F. Eastland Woolen MOA
- 6 Example Programmatic Agreements (will be available via EPA intranet)
 - A. Revolving Fund
 - B. Upper Clark Fork
 - C. Nansemond Ordnance Depot
 - D. Emergency Response

From: Nagrani, Kavita <Nagrani.Kavita@epa.gov>
Sent: Friday, June 12, 2020 8:54 AM
To: Hicks, Matt <Hicks.Matthew@epa.gov>; Palmer, Leif <Palmer.Leif@epa.gov>
Cc: Ghosh, Mita <Ghosh.Mita@epa.gov>
Subject: RE: FL Assumption

Thanks, Matt! I'm also available this morning but plan to log off just before lunchtime today.

From: Hicks, Matt <Hicks.Matthew@epa.gov>
Sent: Thursday, June 11, 2020 11:32 PM
To: Palmer, Leif <Palmer.Leif@epa.gov>
Cc: Ghosh, Mita <Ghosh.Mita@epa.gov>; Nagrani, Kavita <Nagrani.Kavita@epa.gov>
Subject: RE: FL Assumption

Not sure about Kavita but I'm working tomorrow so happy to talk. More about our call with FDEP staff attorneys this afternoon:

- Kavita and I said we were considering the Seminole Tribe of Florida's NHPA consultation comment on the state assumption rulemaking and wanted to know whether it was still a "live" issue for the Tribe.
 - Seminole Tribe's Comment: If EPA's review of the State's 404 assumption package is determined to be a discretionary action, the Seminole Tribe asserts that the National Environmental Policy Act and Section 106 of the National Historic Preservation Act are triggered in addition to Section 7 of the Endangered Species Act (ESA).
- FDEP staff attorneys Stephanie Gray and Ravi Sharma had not had any further discussions with the Seminole Tribe regarding the comment and said that FDEP addressed the comment (I think internally at this point) by saying that the comment is noted and will be addressed by EPA.
- FDEP had some questions about EPA's FR notice on ESA Section 7 and the discretionary/non-discretionary distinction
- We said that EPA hasn't made a decision about whether it would consider our review of the state's assumption package discretionary for NHPA purposes or whether a programmatic consultation would be necessary but that if the Seminole Tribe's issues were already being addressed by FDEP (e.g., via the consultation requirements found in section 5.2.2 of the 404 Applicant's Handbook) that may impact what we do
- FDEP's 404 assumption lead, Heather Mason, then joined the call to update us on a SHPO operations agreement that FDEP is developing which they hope will address many of Tribe's concerns (I said "most" in my previous email but that might be overstating it). It appears that one of the Tribe's main concerns is the ability to weigh in with state 404 permits as much as they currently do with Corps permits. A couple of the Tribe's concerns that may not be addressed by the SHPO operations agreement:
 - The Tribe is concerned that their participation on state 404 general permits will not be equivalent to Corps issued permits
 - The Tribe has asked for the state to appoint a Tribal Historic Resources Coordinator- Heather said they are attempting to get authorization for such a position but are uncertain whether FDEP leadership will agree
- Heather confirmed that the SHPO operations agreement will be complimentary to the state SHPO consultation requirements under 5.2.2 of the 404 Applicant's Handbook
- FDEP plans to share a draft of the SHPO operations agreement with the Seminole Tribe next week and will share a copy with EPA at the same time.

A couple of Jeaneanne's concerns:



From: Palmer, Leif <Palmer.Leif@epa.gov>

Sent: Thursday, June 11, 2020 7:03 PM

To: Hicks, Matt <Hicks.Matthew@epa.gov>

Cc: Ghosh, Mita <Ghosh.Mita@epa.gov>; Nagrani, Kavita <Nagrani.Kavita@epa.gov>

Subject: Re: FL Assumption

Thanks. I missed her call as I was tied up with Blake on a FIFRA matter. I'll call her in the morning. Before talking to OGC I'd like to talk to you a Kavita.

Sent from my iPhone

On Jun 11, 2020, at 4:50 PM, Hicks, Matt <Hicks.Matthew@epa.gov> wrote:

FYI that we're on a call with Jeaneanne. Kavita and I reported out on our call with FDEP this afternoon- they are working on a SHPO operations agreement that they hope will address most of the tribe's concerns- but Jeaneanne is still very concerned [REDACTED] **Ex. 5 AC/DP** [REDACTED] She plans to call you in a moment to discuss elevating this within OGC.